

**FINANCING AGREEMENT**

**BETWEEN**

**WEST LAFAYETTE COMMUNITY DEVELOPMENT CORPORATION**

**AND**

**CITY OF WEST LAFAYETTE, INDIANA**

**Dated as of \_\_\_\_\_, 2016**

**Certain of the rights of the Issuer hereunder have been assigned to The Huntington National Bank, Indianapolis, Indiana, as Trustee under a Trust Indenture dated as of the date hereof, from the Issuer.**

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## FINANCING AGREEMENT

This is a FINANCING AGREEMENT, dated as of \_\_\_\_\_, 2016 (the “Agreement”) between WEST LAFAYETTE COMMUNITY DEVELOPMENT CORPORATION, an Indiana non-profit corporation, duly organized and validly existing under the laws of the State of Indiana (the “WLCDC”), and the CITY OF WEST LAFAYETTE, INDIANA, a municipal corporation duly organized and validly existing under the laws of the State of Indiana (the “Issuer”).

WHEREAS, Indiana Code, Title 36, Article 7, Chapters 11.9 and 12, as supplemented and amended (collectively, the “Act”), authorizes and empowers the Issuer to issue revenue bonds and to lend the proceeds therefrom for the purpose of financing costs of construction of infrastructure, for diversification of economic development and promotion of job opportunities in or near such Issuer and vests the Issuer with powers that may be necessary to enable it to accomplish such purposes; and

WHEREAS, the West Lafayette Redevelopment Commission (the “Redevelopment Commission”) has established the Levee/Village Redevelopment Area (the “Levee/Village Area”) and the 231 Purdue Economic Development Area (the “231 Purdue Area”) (the Levee/Village Area and the 231 Purdue Area, collectively, the “Area”), in the City of West Lafayette, Indiana; and

WHEREAS, the WLCDC has entered into a Sublease of the Project (each term as hereinafter defined) to the Redevelopment Commission in the form of Exhibit B hereto, pursuant to which the Redevelopment Commission has agreed to make lease rental payments to the WLCDC, which lease rental payments are to be made from TIF 1 Revenues and TIF 2 Revenues of the Levee/Village Area and the 231 Purdue Area, respectively, and, (i) to the extent that TIF 1 Revenues are insufficient pursuant to the TIF 1 schedule of payments, from an *ad valorem* real property tax on all property in the West Lafayette Redevelopment District to replenish such deficiency of TIF 1 Revenues, and (2) to the extent TIF 2 Revenues are insufficient pursuant to the TIF 2 schedule of payments, from a non-revolving line of credit of the Redevelopment Commission from the Purdue Research Foundation (the “Line of Credit Revenues”); and

WHEREAS, pursuant to an Assignment of Rents (the “Assignment of Rents”) from the WLCDC to The Huntington National Bank, as Trustee (the “Trustee”) under the Indenture, the WLCDC will assign its rights to the Sublease Revenues to the Trustee; and

WHEREAS, the Issuer, upon finding that the Project (as hereinafter defined) and the proposed financing of the construction thereof will create additional employment opportunities in the City of West Lafayette; will benefit the health, safety, morals, and general welfare of the citizens of the City of West Lafayette and the State of Indiana; and will comply with the purposes and provisions of the Act, adopted an ordinance approving the proposed financing; and

WHEREAS, the Issuer intends to issue its Taxable Economic Development Revenue Bonds, Series 2016 (State Street Redevelopment Project) in the aggregate principal amount of \$77,000,000 (the “Series 2016 Bonds”) pursuant to the Trust Indenture dated as of \_\_\_\_\_, 2016 (the “Indenture”) from the Issuer to The Huntington National Bank, Indianapolis, Indiana, as Trustee (the “Trustee”), and to credit the proceeds of the Series 2016

Bonds pursuant to the provisions of this Agreement to the WLCDC to complete the Project set forth on Exhibit A; and

WHEREAS, this Agreement provides for the technical repayment by the WLCDC representing the credit of the proceeds of the Series 2016 Bonds and further provides for the WLCDC's repayment obligation to be evidenced by the WLCDC's Note, Series 2016 (the "Series 2016 Note") in substantially the form attached hereto as Exhibit C; and

WHEREAS, pursuant to the Indenture, the Issuer will pledge and assign the Series 2016 Note and assign certain of its rights under this Agreement to the Trustee as security for the Series 2016 Bonds; and

WHEREAS, the Series 2016 Bonds issued under the Indenture will be payable solely out of (i) the payments to be made by the WLCDC on the Series 2016 Note and any other Notes issued hereunder; (ii) Sublease Revenues (as defined in the Indenture); (iii) funds in the Debt Service Reserve Fund established under the Indenture to replace any deficiency of TIF 1 Revenues; or (iv) proceeds of condemnation and insurance.

## **PRELIMINARY STATEMENT**

In consideration of the premises, the credit of the proceeds to the WLCDC of the Series 2016 Bonds, the acceptance of the Series 2016 Note by the Issuer, and of other good and valuable consideration, the receipt of which is hereby acknowledged, the WLCDC has executed and delivered this Agreement.

This Agreement is executed upon the express condition that if the WLCDC shall keep, perform and observe all and singular the covenants and promises expressed in the Note and this Agreement to be kept, performed and observed by the WLCDC, then this Agreement and the rights hereby granted shall cease, determine and be void; otherwise to remain in full force and effect.

The WLCDC and the Issuer hereby further covenant and agree as follows:

### **ARTICLE I.**

#### **DEFINITIONS AND EXHIBITS**

Section 1.1. Terms Defined. As used in this Agreement, the following terms shall have the following meanings unless the context clearly otherwise requires:

“231 Purdue Economic Development Allocation Area” means the allocation area generating Tax Increment in the 231 Purdue Economic Development Area known herein as TIF 2 Revenues.

“Act” means, collectively, Indiana Code Title 36, Article 7, Chapters 11.9, 12, 14 and 25.

“Bond Counsel” means a nationally recognized firm of municipal bond attorneys acceptable to the Requisite Bondholders.

“Bond Fund” means the Bond Fund established by Section 4.2 of the Indenture.

“Bondholder” or “owner of a Bond” or any similar term means the owner of a Bond, which for purpose of this document shall be The Huntington National Bank.

“Bonds” mean the Series 2016 Bonds, the Additional Bonds and any other bonds issued under the Indenture.

“WLCDC” means West Lafayette Community Development Corporation, an Indiana non-profit corporation, duly organized and validly existing under the laws of the State of Indiana and qualified to do business in the State of Indiana, or any successors thereto permitted under Section 3.3 hereof.

“Commission” means the City of West Lafayette Economic Development Commission.

“Counsel” means an attorney duly admitted to practice law before the highest court of any state and, without limitation, may include legal counsel for either the Issuer or the WLCDC.

“Government Obligations” means (a) direct obligations of the United States of America for the payment of which the full faith and credit of the United States of America is pledged, (b) obligations issued by a person controlled or supervised by and acting as an instrumentality of the United States of America, the payment of the principal of and premium, if any, and interest on

which is fully guaranteed as a full faith and credit obligation of the United States of America (including any securities described in (a) or (b) issued or held in book-entry form on the books of the Department of Treasury of the United States of America or Federal Reserve Bank), (c) certificates or receipts representing direct ownership interests in obligations or specified portions (such as principal or interest) of obligations described in (a) or (b), which obligations are held by a custodian in safekeeping on behalf of such certificates or receipts, or (d) senior, unsubordinated obligations of the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation; provided that with respect to obligations of the sort described in clause (d), (i) such obligations are rated in the highest rating category for such obligation by any of Moody's, S&P or Fitch and (ii) in the event that any bonds are defeased with such obligations in whole or in part those Bonds shall be concurrently rated in the highest rating category for such obligations by any of Moody's, S&P or Fitch or (e) any other investments approved by the Requisite Bondholders.

"Indenture" means the Trust Indenture dated as of \_\_\_\_\_, 2016, between the Issuer and the Trustee and all amendments and supplements thereto.

"Interest Payment Date" on the Series 2016 Bonds means each February 1 and August 1, beginning \_\_\_\_\_, 20\_\_.

"Issuer" means the City of West Lafayette, Indiana, a municipal corporation duly organized and validly existing under the laws of the State.

"Levee/Village Redevelopment Allocation Area" means the allocation area generating Tax Increment in the Levee/Village Redevelopment Area known herein as TIF 1 Revenues.

"Line of Credit Revenues" means those revenues received by the Redevelopment Commission from the TIF Support Facility Agreement.

"Net Proceeds," when used with respect to any insurance or condemnation award, means the gross proceeds from the insurance or condemnation award remaining after payment of all expenses (including attorneys' fees and expenses and any expenses of the Trustee or the Issuer) incurred in the collection of such gross proceeds.

"Note" or "Notes" means the Series 2016 Note, any notes delivered in connection with Additional Bonds and any notes issued in exchange therefor pursuant to Section 3.7 hereof.

"Paying Agent" means The Huntington National Bank, or its successors or assigns, as paying agent under the Indenture.

"Project" means the project as described in Exhibit A.

"Qualified Investments" means to the extent permitted by the laws of the State (i) Government Obligations; (ii) bonds, debentures, participation certificates or notes issued by any of the following: Federal Farm Credit Banks, Federal Financing Bank, Federal Home Loan Banks, Federal National Mortgage Association or Federal Home Loan Mortgage Corporation; (iii) certificates of deposit, time deposits and other interest-bearing deposit accounts with any banking institution, including the Trustee, which are insured by the Federal Deposit Insurance Corporation; (iv) any money market fund, sweep account, mutual fund or trust, which may be funds or trusts of the Trustee or Paying Agent, as shall invest solely in a portfolio of obligations described in (i) or (ii) above or money market funds rated in the highest category by Moody's Investors Service or Standard & Poor's Ratings Group; (v) repurchase agreements with the

Trustee or any of its affiliated banks or any other bank having a net worth of at least \$100,000,000 secured by a pledge and physical delivery (except in the case of securities issued in book-entry form, which shall be registered in the name of the Trustee) to the Trustee of obligations described in (i) or (ii) hereof; (vi) municipal obligations the interest on which would be excluded from the gross income of the owners thereof for federal tax purposes under Section 103 of the Internal Revenue Code of 1986, as amended, if (a) rated in one of the three highest rating categories of either Moody's Investors Service or Standard & Poors Ratings Group, or, (b) if fully secured by securities guaranteed as to principal and interest by the United States of America; (vii) stock of a Qualified Regulated Investment Company which invests solely in obligations described in (vi) above or (viii) any other investment approved by the Requisite Bondholders.

"Redevelopment Commission" means the City of West Lafayette Redevelopment Commission.

"Sale of Series 2016 Bonds" shall mean the sale by the Issuer of an amount of Series 2016 Bonds.

"Series 2016 Bonds" means the City of West Lafayette, Indiana, Taxable Economic Development Revenue Bonds, Series 2016 (State Street Redevelopment Project).

"Sublease" means the sublease dated as of \_\_\_\_\_, 2016, as amended on \_\_\_\_\_, 2016, pursuant to which the WLCDC has subleased the Project to the Redevelopment Commission.

"Sublease Revenues" means the revenues received by the WLCDC from the Redevelopment Commission pursuant to the Sublease, together with the proceeds of any rental interruption insurance available to the WLCDC.

"Tax Increment" means all real property tax proceeds attributable to the assessed valuation within the Levee/Village Redevelopment Allocation Area or 231 Purdue Economic Development Allocation Area as of each January 1 in excess of the base assessed value. The incremental assessed value is multiplied by the current property tax rate (per \$100 assessed value).

"TIF 1 Revenues" means Tax Increment received by the Redevelopment Commission pledged to the Issuer pursuant to Resolution No. 2015-\_\_ adopted by the Redevelopment Commission on \_\_\_\_\_, 2015 consisting of Tax Increment generated from the Levee/Village Redevelopment Allocation Area.

"TIF 2 Revenues" means Tax Increment received by the Redevelopment Commission pledged to the Issuer pursuant to Resolution No. 2015-\_\_ adopted by the Redevelopment Commission on \_\_\_\_\_, 2015 consisting of Tax Increment generated from the 231 Purdue Economic Development Allocation Area.

"TIF Support Facility Agreement" means that agreement between the Redevelopment Commission and the Purdue Research Foundation, dated as of \_\_\_\_\_, 2016, providing a non-revolving line of credit to the Redevelopment Commission in the event of a deficiency of TIF 2 Revenues.



“Trustee” means the trustee and/or co-trustee at the time serving as such under the Indenture, and shall initially mean The Huntington National Bank, West Lafayette, Indiana.

Section 1.2. Rules of Interpretation. For all purposes of this Agreement, except as otherwise expressly provided, or unless the context otherwise requires:

(a) “This Agreement” means this instrument as originally executed and as it may from time to time be supplemented or amended pursuant to the applicable provisions hereof.

(b) All references in this instrument to designated “Articles,” “Sections” and other subdivisions are to the designated Articles, Sections and other subdivisions of this instrument as originally executed. The words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision.

(c) The terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular and the singular as well as the plural.

(d) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles as consistently applied.

(e) Any terms not defined herein but defined in the Indenture shall have the same meaning herein.

(f) The terms defined elsewhere in this Agreement shall have the meanings therein prescribed for them.

Section 1.3. Exhibits. The following Exhibits are attached to and by reference made a part of this Agreement.

Exhibit A. Description of Project

Exhibit B. Form of Sublease

Exhibit C. Form of Series 2016 Note.

(End of Article I)

## ARTICLE II.

### REPRESENTATIONS

Section 2.1. Representations by Issuer. Issuer represents and warrants that:

(a) Issuer is a municipal corporation organized and existing under the laws of the State of Indiana. Under the provisions of the Act, the Issuer is authorized to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder. Issuer has been duly authorized to execute and deliver this Agreement. Issuer agrees that it will do or cause to be done all things within its control and necessary to preserve and keep in full force and effect its existence.

(b) Issuer agrees to issue the Series 2016 Bonds to assist the WLCDC in financing the construction of the Project, to create additional employment opportunities in West Lafayette, Indiana, and to benefit the health, safety, morals and general welfare of the citizens of West Lafayette and the State of Indiana, and to secure the Bonds by pledging certain of its rights and interest in this Agreement and the Series 2016 Note to the Trustee.

(c) The Issuer represents that the Series 2016 Note will be assigned to the Trustee pursuant to the Indenture, and that no further assignment is contemplated by the Issuer, since the Issuer recognizes that the Series 2016 Note has not been registered under the Securities Act of 1933.

(d) The 231 Purdue Economic Development Allocation Area and the Levee/Village Redevelopment Allocation Area have been properly created as “allocation areas” pursuant to Indiana Code 36-7-14-39. The TIF 1 Revenues, the TIF 2 Revenues and the Special Benefits Tax Revenues (as defined in the Indenture) for the Levee/Village Redevelopment Area have been properly and legally pledged by the Redevelopment Commission to the payment of the Sublease rentals.

(e) Pursuant to the Assignment of Rents, the Sublease Revenues have been properly and legally pledged by the WLCDC to the payment of the Series 2016 Bonds.

(f) In connection with the execution, delivery and performance by the Issuer of this Agreement, the Issuer has complied with all applicable federal, state and local laws and regulations.

(g) The execution by the WLCDC of this Agreement and the Series 2016 Note will not result in the creation of any liens on the property of the WLCDC (it being understood, however, that failure of the WLCDC to pay property taxes may independently result in the imposition of liens on the WLCDC’s property).

(h) This Agreement has been duly executed and delivered by the Issuer and constitute the legal, valid and binding agreement of the Issuer, enforceable against the Issuer in accordance with its respective terms, except as may be limited by bankruptcy, insolvency or other similar laws affecting the enforcement of creditors’ rights in general.

(i) There are no actions, suits or proceedings pending, or, to the knowledge of the Issuer, threatened, before any court, administrative agency or arbitrator which, individually or in

the aggregate, might result in any material adverse change in the financial condition of the Issuer or might impair the ability of the Issuer to perform its obligations under this Agreement.

(j) The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, including the fulfillment of or compliance with the terms and conditions of this Agreement, will not contravene any law or any governmental rule, regulation or order presently binding on the Issuer or conflict with or result in a breach of the terms, conditions or provisions of any agreement or instrument to which Issuer is now a party or by which Issuer is bound, or constitute a default under any of the foregoing, or result in the creation or imposition of any liens, charges or encumbrances whatsoever upon any of the property or assets of Issuer under the terms of any instrument or agreement.

(k) No event has occurred and is continuing which with the lapse of time or the giving of notice would constitute an event of default by the Issuer under this Agreement or the Series 2016 Note.

Section 2.2. Representations by WLCDC. WLCDC represents and warrants that:

(a) It is an Indiana non-profit corporation duly organized and validly existing under the laws of the State of Indiana and authorized to do business in the State of Indiana, is not in violation of any laws in any manner material to its ability to perform its obligations under this Agreement and the Series 2016 Note, has full power to enter into and perform its obligations under this Agreement, the Series 2016 Note and the Assignment of Rents, and by proper action has duly authorized the execution and delivery of this Agreement and the Assignment of Rents and the issuance of the Series 2016 Note.

(b) The WLCDC intends to cause the Project to be operated as an economic development facility under the Act, until the expiration or earlier termination of this Agreement as provided herein.

(c) Neither the execution and delivery of this Agreement or the Assignment of Rents, the consummation of the transactions contemplated hereby including execution and delivery of the Series 2016 Note nor the fulfillment of or compliance with the terms and conditions of this Agreement or the Assignment of Rents, will contravene the WLCDC's articles of incorporation or by-laws or any law or any governmental rule, regulation or order presently binding on the WLCDC or conflicts with or results in a breach of the terms, conditions or provisions of any agreement or instrument to which WLCDC is now a party or by which it is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any liens, charges, or encumbrances whatsoever upon any of the property or assets of WLCDC under the terms of any instrument or agreement.

(d) To the best of the WLCDC's knowledge, the execution, delivery and performance by the WLCDC of this Agreement, the Assignment of Rents and the Series 2016 Note do not require the consent or approval of, the giving of notice to, the registration with, or the taking of any other action in respect of, any federal, state or other governmental authority or agency, not previously obtained or performed.

(e) Each of this Agreement, the Assignment of Rents and the Series 2016 Note has been duly executed and delivered by the WLCDC and constitutes the legal, valid and binding agreement of the WLCDC, enforceable against the WLCDC in accordance with its respective

terms, except as may be limited by bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights in general.

(f) There are no actions, suits or proceedings pending, or, to the knowledge of the WLCDC, threatened, before any court, administrative agency or arbitrator which, individually or in the aggregate, might result in any material adverse change in the financial condition of the WLCDC or might impair the ability of the WLCDC to perform its obligations under this Agreement, the Assignment of Rents or the Series 2016 Note.

(g) No event has occurred and is continuing which with the lapse of time or the giving of notice would constitute an event of default under this Agreement, the Assignment of Rents or the Series 2016 Note.

Section 2.3. The Series 2016 Bonds and Series 2016 Note. Concurrently with the execution and delivery hereof, the Issuer is issuing the Series 2016 Bonds to be paid by the WLCDC pursuant to its Series 2016 Note substantially in the form attached hereto as Exhibit C.

(End of Article II)

## ARTICLE III.

### PARTICULAR COVENANTS OF THE WLCDC

Section 3.1. Consent to Assignments to Trustee. The WLCDC acknowledges and consents to the pledge and assignment of the Series 2016 Note and the assignment of the Issuer's rights hereunder to the Trustee pursuant to the Indenture and agrees that, subject to the direction of the Requisite Bondholders, the Trustee may enforce the rights, remedies and privileges granted to the Issuer hereunder, to receive payments under any provision of Article III hereof and to execute and deliver supplements and amendments to this Agreement pursuant to Section 7.1 hereof.

Section 3.2. Payment of Principal, Premium and Interest; Payments Pledged.

(a) Subject to the provisions of Section 11.13 of the Indenture, the WLCDC will duly and punctually pay the principal of, premium, if any, and interest on the Notes at the rates and the places and in the manner mentioned in the Series 2016 Note and this Agreement according to the true intent and meaning thereof and hereof, *but solely to the extent that Sublease Revenues are available for such purpose, as follows:* on or before any Interest Payment Date for the Bonds or any other date that any payment of interest or principal is required to be made in respect of the Bonds pursuant to the Indenture, until the principal of and interest on the Bonds shall have been fully paid or provision for the payment thereof shall have been made in accordance with the Indenture, it will pay in immediately available funds, a sum which, together with any moneys available for such payment in the Bond Fund (including without limitation any Sublease Revenues), will enable the Trustee to pay the amount payable on such date as principal of (whether at maturity or upon redemption or acceleration or otherwise), premium, if any, and interest on the Bonds as provided in the Indenture.

(b) The WLCDC also agrees to pay directly to the Trustee so long as there are Bonds outstanding, *and only to the extent that Sublease Revenues are available for such purpose*, (i) all fees and charges of the Trustee incurred under the Indenture, as and when the same become due; (ii) all costs incident to the payment of the principal of and interest on the Bonds as the same become due and payable, including all costs and expenses in connection with the call, redemption and payment of Bonds; (iii) all expenses incurred in connection with the enforcement of any rights under the Agreement or the Indenture by the Issuer, the Trustee or the Bondholders; and (iv) all other payments of whatever nature which the WLCDC has agreed to pay or assume under the provisions of the Agreement; *provided, however*, that the WLCDC may, without creating a default under the Agreement, contest in good faith the necessity for any such extraordinary services and extraordinary expenses and the reasonableness of any such fees, charges or expenses and provided that the expenses have been approved by the Requisite Bondholders.

(c) The WLCDC covenants and agrees with and for the express benefit of the Issuer, the Trustee and the owners of the Bonds that all payments pursuant hereto and to the Notes shall be made by the WLCDC on or before the date the same become due, and the WLCDC shall perform all of its other obligations, covenants and agreements hereunder, without notice or demand (except as provided herein), and without abatement, deduction, reduction, diminution, waiver, abrogation, set-off, counterclaim, recoupment, defense or other modification or any right

of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising, and regardless of any act of God, contingency, event or cause whatsoever, and irrespective (without limitation) of whether the Project or the WLCDC's title to the Project or any part thereof is defective or nonexistent, or whether the WLCDC's revenues are sufficient to make such payments, and notwithstanding any damage to, or loss, theft or destruction of, the Project or any part thereof, expiration of this Agreement, any failure of consideration or frustration of purpose, the taking by eminent domain or otherwise of title to or of the right of temporary use of, all or any part of the Project, legal curtailment of the WLCDC's use thereof, or whether with or without the approval of the Issuer, any change in the tax or other laws of the United States of America, the State of Indiana, or any political subdivision of either thereof, any change in the Issuer's legal organization or status, or any default of the Issuer hereunder, and regardless of the invalidity of any portion of this Agreement; and the WLCDC hereby waives the provisions of any statute or other law now or hereafter in effect impairing or conflicting with any of its obligations, covenants or agreements under this Agreement or which releases or purports to release the WLCDC therefrom. Nothing in this Agreement shall be construed as a waiver by the WLCDC of any rights or claims the WLCDC may have against the Issuer under this Agreement or otherwise, but any recovery upon such rights and claims shall be had from the Issuer separately, it being the intent of this Agreement that the WLCDC shall be unconditionally and absolutely obligated without right of set-off or abatement, to perform fully all of its obligations, agreements and covenants under this Agreement for the benefit of the holders of the Bonds.

(d) It is understood and agreed that all payments made by WLCDC pursuant to this Section 3.2, all Sublease Revenues and the Notes are pledged to Trustee pursuant to the granting clauses of the Indenture. WLCDC assents to such pledge, and hereby agrees that, as to Trustee, its obligation to make such payments shall be absolute and shall not be subject to any defense or any right of set-off, counterclaim or recoupment arising out of any breach by Issuer or Trustee of any obligation to WLCDC, whether hereunder or otherwise, or out of any indebtedness or liability at any time owing to WLCDC by Issuer. Issuer hereby directs WLCDC and WLCDC hereby agrees to pay to the Paying Agent at its principal office all amounts payable by WLCDC pursuant to this Section 3.2 and the Notes.

Section 3.3. Maintenance of Existence. The WLCDC shall not merge, consolidate, dissolve or otherwise transfer its assets or assign its rights or obligations under this Agreement so long as the Series 2016 Bonds remain outstanding.

Section 3.4. Trustee's Right to Perform WLCDC's Covenants. In the event the WLCDC shall fail to (i) complete the construction of the Project, or (ii) fail to perform any other act required to be performed hereunder, then and in each such case the Trustee, upon not less than 5 days' prior written notice to the WLCDC and with the consent of the Requisite Bondholders, may (but shall not be obligated to) remedy such default.

Section 3.5. Indemnity by WLCDC. To the extent, and only to the extent, that the WLCDC has been indemnified by the Redevelopment Commission for such purpose, the WLCDC will pay, and protect, indemnify and save the Issuer (including members, directors, officials, officers, agents, attorneys and employees thereof), the Bondholders and the Trustee harmless from and against, all liabilities, losses, damages, costs, expenses (including attorneys' fees and expenses of the Issuer and the Trustee), causes of actions, suits, claims, demands and judgments of any nature arising from or relating to:

(a) The WLCDC's violation of any agreement or condition of this Agreement or the Indenture, except by the Issuer or the Trustee;

(b) Violation of any contract, agreement or restriction by the WLCDC relating to the Project, or a part thereof;

(c) The WLCDC's violation of any law, ordinance or regulation arising out of the ownership, occupancy or use of the Project, or a part thereof;

(d) Any act, failure to act, or misrepresentation by the WLCDC, or any of the WLCDC's agents, contractors, servants, employees or licensees;

(e) The provision of any information or certification furnished by the WLCDC to the Bondholders in connection with the issuance and sale of the Series 2016 Bonds and the Project.

The WLCDC hereby further agrees to indemnify and hold harmless the Trustee from and against any and all costs, claims, liabilities, losses or damages whatsoever (including reasonable costs and fees of counsel, auditors or other experts), asserted or arising out of or in connection with the acceptance or administration of the trusts established pursuant to the Indenture, except costs, claims, liabilities, losses or damages resulting from the negligence or willful misconduct of the Trustee, including the reasonable costs and expenses (including the reasonable fees and expenses of its counsel) of defending itself against any such claim or liability in connection with its exercise or performance of any of its duties hereunder and of enforcing this indemnification provision. The indemnifications set forth herein shall survive the termination of the Indenture and/or the resignation or removal of the Trustee.

The foregoing shall not be construed to prohibit the WLCDC from pursuing its remedies against either the Issuer or the Trustee for damages to the WLCDC resulting from personal injury or property damage caused by the intentional misrepresentation or willful misconduct of either the Issuer or the Trustee.

Section 3.6. Indemnity by Issuer. To the extent permitted by law, the Issuer will pay, and protect, indemnify and save the WLCDC (including members, directors, officials, officers, agents, attorneys and employees thereof) and the Bondholders harmless from and against, all liabilities, losses, damages, costs, expenses (including attorneys' fees and expenses of the WLCDC), causes of actions, suits, claims, demands and judgments of any nature arising from or relating to:

(a) The Issuer's violation of any agreement or condition of this Agreement or the Indenture, except by the WLCDC or the Trustee;

(b) Violation of any contract, agreement or restriction by the Issuer relating to the Project, or a part thereof;

(c) Any act, failure to act, or misrepresentation by the Issuer, or any of the Issuer's agents, contractors, servants, employees or licensees;

(d) The provision of any information or certification furnished by the Issuer to the Bondholders in connection with the issuance and sale of the Series 2016 Bonds and the Project.

The foregoing shall not be construed to prohibit the Issuer from pursuing its remedies against either the WLCDC or the Trustee for damages to the Issuer resulting from personal

injury or property damage caused by the intentional misrepresentation or willful misconduct of either the WLCDC or the Trustee.

Section 3.7. Issuance of Substitute Notes. Upon the surrender of any Note, the WLCDC will execute and deliver to the holder thereof a new Note dated the date of the Note being surrendered but with the same terms contained within this Note and with appropriate notations thereon to reflect payments of principal and interest thereon; *provided, however*, that there shall never be outstanding at any one time more than one Note of any one series.

Section 3.8. Payment of Expenses of Issuance of Series 2016 Bonds. The WLCDC agrees to be liable for and pay for any filing expenses, trustee's acceptance fees, commitment fees, legal fees, printing expenses and other fees and expenses incurred or to be incurred by or on behalf of the Issuer and the Trustee in connection with or as an incident to the issuance and sale of the Series 2016 Bonds, but only to the extent approved by the Requisite Bondholders. Pursuant to Section 3.3 of the Indenture, the Issuer has authorized the use of certain proceeds of the Series 2016 Bonds to defray the WLCDC's obligations under this Section.

Section 3.9. Funding of Indenture Funds; Investments. The Issuer shall deposit with the Trustee monies in the manner specified in Article III of the Indenture, and the Trustee shall deposit such monies in the manner specified in Article III of the Indenture.

The WLCDC and the Issuer agree that all moneys in any Fund established by the Indenture may, at the written direction of the WLCDC, be invested in Qualified Investments.

The Trustee is hereby authorized to trade with itself in the purchase and sale of securities for such investments. The Trustee shall not be liable or responsible for any loss resulting from any such investment. All such investments shall be held by or under the control of the Trustee and any income resulting therefrom shall be applied in the manner specified in the Indenture.

Although the Issuer and the WLCDC each recognizes that it may obtain a broker confirmation or written statement containing comparable information at no additional cost, the Issuer and the WLCDC hereby agree that confirmations of permitted investments are not required to be issued by the Trustee for each month in which a monthly statement is rendered. No statement need be rendered for any fund or account if no activity occurred in such fund or account during such month.

Section 3.10. Other Amounts Payable by the WLCDC. Pursuant to the Indenture, the WLCDC covenants and agrees to pay the following, but only to the extent the Requisite Bondholders shall have first approved, and only to the extent that Sublease Revenues are available for such purpose:

(a) All reasonable fees, charges and expenses, including agent and counsel fees and expenses, of the Trustee incurred under the Indenture, as and when the same become due and payable.

(b) All reasonable costs incident to the payment of the principal of, premium, if any, and interest on the Series 2016 Bonds as the same become due and payable, including all reasonable costs and expenses in connection with the call, redemption and payment of Series 2016 Bonds.



(c) An amount sufficient to reimburse the Issuer for all expenses reasonably incurred by the Issuer under this Agreement and in connection with the performance of its obligations under this Agreement or the Indenture.

(d) All reasonable expenses incurred in connection with the enforcement of any rights under this Agreement or the Indenture by the Issuer, the Trustee or the Bondholders.

(e) All other payments of whatever nature which the WLCDC has agreed to pay or assume under the provisions of the Agreement.

Notwithstanding anything in this Section 3.10 to the contrary, the WLCDC may, without creating an event of default as herein defined, after making the payments required by this Section 3.10, contest in good faith the necessity for any such services, fees, charges or expenses of the Issuer or the Trustee.

Section 3.11. Credits on Notes. Notwithstanding any provision contained in this Agreement or in the Indenture to the contrary, in addition to any credits on the Notes resulting from the payment or prepayment thereof from other sources:

(a) subject to the provisions of Article IV with respect to partial prepayment of the Note, any moneys deposited by the Trustee in the Bond Fund for payment on the Bonds shall be credited against the obligation of the WLCDC to pay the principal, premium, if any, and interest on the Notes as the same become due; and

(b) the principal amount of Bonds of any series and maturity acquired by the WLCDC and delivered to the Paying Agent, or acquired by the Paying Agent and canceled, shall be credited against the obligation of the WLCDC to pay the principal of the Note.

Section 3.12. Completion of Project.

(a) WLCDC agrees that it will make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions with any other persons, firms, corporations or partnerships and in general do all things which may be requisite or proper, all for constructing and completing the Project, to the extent permitted by law.

(b) The Completion Date (as defined in the Indenture) shall be evidenced to Trustee and Issuer by a certificate signed by an authorized representative of WLCDC stating that, except for amounts for any Costs of Construction not then due and payable or being contested in good faith, (i) the construction of the Project has been completed and any and all labor, services, materials and supplies used in such construction have been paid for and (ii) all other items necessary in connection with the Project have been constructed and all costs and expenses incurred in connection therewith have been paid. Notwithstanding the foregoing, such certificate shall state that it is given without prejudice to any rights against third parties which exist at the date of such certificate or which may subsequently come into being.

Section 3.13. Sale, Substitution, or Lease of Project. The WLCDC may sell, lease, mortgage or transfer or otherwise dispose of the Project or any portion thereof as shall have been approved by the Requisite Bondholders.

(End of Article III)

## **ARTICLE IV.**

### **PREPAYMENT OF SERIES 2016 NOTE**

Section 4.1. Optional Prepayment. The Series 2016 Note may be prepaid, in whole, on any date at the principal amount thereof and without premium, plus in each case accrued interest to the date fixed for redemption.

In order to exercise such option to prepay the Series 2016 Note, in whole, the WLCDC must cause funds to be deposited with the Trustee to pay the principal of and accrued interest on the Series 2016 Note to be prepaid and the full redemption of the Series 2016 Bonds. All amounts so paid shall also be a credit against any mandatory sinking fund obligation and the corresponding Series 2016 Note obligation with respect thereto in the sequence in which such mandatory sinking fund obligation becomes due.

Section 4.2. Mandatory Prepayment. Redemption of Bonds with proceeds derived under Section 3.11 hereof shall be deemed prepayment of the Notes in the same amount as the amount of Bonds redeemed.

Section 4.3. Notice of Prepayment. The WLCDC shall give the Trustee not less than ten (10) days prior written notice of any prepayment of the Series 2016 Note pursuant to Sections 3.11 and 4.1 hereof, which notice shall designate the date of prepayment and the amount thereof, indicate the section or subsection pursuant to which prepayment shall occur, and direct the redemption of the Series 2016 Bonds in the amounts corresponding to the Series 2016 Note to be prepaid.

(End of Article IV)

## **ARTICLE V.**

### **EVENTS OF DEFAULT AND REMEDIES THEREFOR**

#### **Section 5.1. Events of Default.**

(a) The occurrence and continuance of any of the following events shall constitute an “event of default” hereunder:

(i) failure of the WLCDC to observe and perform any other covenant, condition or provision hereof and to remedy such default within 30 days after notice thereof from the Trustee to the WLCDC, or commence to remedy the default if the remedy requires more than 30 days, unless the Requisite Bondholders shall have consented thereto;

(ii) the entry of a decree or order for relief by a court having jurisdiction in the premises in respect of the WLCDC in an involuntary case under any applicable bankruptcy, insolvency or similar law now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) of the WLCDC or for any substantial part of its property, or ordering the windup or liquidation of its affairs; or the filing and pendency for thirty days without dismissal of a petition initiating an involuntary case under any other bankruptcy, insolvency or similar law;

(iii) the commencement by the WLCDC of any voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, whether consent by it to an entry to an order for relief in an involuntary case and under any such law or to the appointment of or the taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of the WLCDC or of any substantial part of its property, or the making of it by any general assignment for the benefit of creditors, or the failure of the WLCDC generally to pay its debts as such debts become due, or the taking of corporate action by the WLCDC in furtherance of any of the foregoing; or

(iv) any event of default under Section 7.1 of the Indenture.

(b) During the occurrence and continuance of any event of default hereunder, the Trustee, as assignee of the Issuer pursuant to the Indenture, shall have the rights and remedies hereinafter set forth, in addition to any other remedies herein or by law provided.

(c) Upon the occurrence of an event of default described in this Section 5.1:

(i) Acceleration. The Trustee shall, if and only if directed by the Bondholders, by written notice to the WLCDC, declare the principal of the Notes (if not then due and payable), and the interest accrued thereon to be due and payable immediately, and upon any such declaration the principal of the Notes and the interest accrued on the Notes shall become and be immediately due and payable, anything in the Notes or in this Agreement contained to the contrary notwithstanding.

Following an acceleration, nonpayment of principal and interest on the Notes is not an event of default so long as such nonpayment is the result of a shortfall in the

amount of Sublease Revenues available for such payment and credit under this Agreement.

(ii) Right to Bring Suit, Etc. The Trustee, with or without entry, personally or by attorney, shall if and only if directed by the Bondholders, proceed to protect and enforce its rights by a suit or suits in equity or at law, whether for damages or for the specific performance of any covenant or agreement contained in the Notes, this Agreement or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy, as the Trustee shall deem most effectual to protect and enforce any of its rights or duties hereunder; *provided, however* that all costs incurred by the Trustee and the Issuer under this Article shall be paid to the Issuer and the Trustee by the WLCDC on demand.

(iii) Waiver of Events of Default. If after any event of default occurs and prior to the Trustee exercising any of the remedies provided in this Agreement, the WLCDC will have completely cured such default, then in every case such default will be waived, rescinded and annulled by the Trustee by written notice given to the WLCDC. In addition, if the acceleration of the maturity of the Bonds will have been annulled and rescinded in accordance with the provisions of the Indenture, then the acceleration of all payments and any other outstanding indebtedness under this Agreement will likewise be annulled and rescinded. No such waiver, annulment or rescission will affect any subsequent default or impair any right or remedy consequent thereon.

Section 5.2. Remedies Cumulative. No remedy herein conferred upon or reserved to the Trustee is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

Section 5.3. Delay or Omission Not a Waiver. No delay or omission of the Trustee to exercise any right or power accruing upon any event of default shall impair any such right or power, or shall be construed to be a waiver of any such event of default or an acquiescence therein; and every power and remedy given by this Agreement to the Trustee may be exercised from time to time and as often as may be deemed expedient by the Trustee.

Section 5.4. Remedies Subject to Provisions of Law. All rights, remedies and powers provided by this Article may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law in the premises, and all the provisions of this Article are intended to be subject to all applicable mandatory provisions of law which may be controlling in the premises and to be limited to the extent necessary so that they will not render this Agreement invalid or unenforceable under the provisions of any applicable law.

(End of Article V)

## **ARTICLE VI.**

### **IMMUNITY**

Section 6.1. Immunity. No covenant or agreement contained in the Bonds, this Agreement or the Indenture shall be deemed to be a covenant or agreement of any member of the Issuer, the WLCDC, the Commission, or the Redevelopment Commission or of any officer or employee of the Issuer, the WLCDC, the Commission, the Redevelopment Commission or their legislative and fiscal bodies in his or her individual capacity, and neither the members of the Issuer, the WLCDC, the Commission, the Redevelopment Commission, nor any officer or employee of the Issuer or the WLCDC executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance of the Bonds.

(End of Article VI)

## **ARTICLE VII.**

### **SUPPLEMENTS AND AMENDMENTS TO THIS AGREEMENT**

Section 7.1. Supplements and Amendments to this Agreement. Subject to the provisions of Article IX of the Indenture, the WLCDC and the Issuer may from time to time enter into such supplements and amendments to this Agreement as to them may seem necessary or desirable to effectuate the purposes or intent hereof.

(End of Article VII)

## **ARTICLE VIII.**

### **DEFEASANCE**

Section 8.1. Defeasance. If the WLCDC shall pay and discharge or provide, in a manner satisfactory to the Trustee, for the payment and discharge of the whole amount of the Notes at the time outstanding, and shall pay or cause to be paid all other sums payable hereunder, or shall make arrangements satisfactory to the Trustee for such payment and discharge, and if provision shall have been made for the satisfaction and discharge of the Indenture as provided therein, then and in that case, all property, rights and interest hereby conveyed or assigned or pledged shall revert to the WLCDC, and the estate, right, title and interest of the Trustee therein shall thereupon cease, terminate and become void; and this Agreement, and the covenants of the WLCDC contained herein, shall be discharged and the Trustee in such case on demand of the WLCDC and at its cost and expense, shall execute and deliver to the WLCDC a proper instrument or proper instruments acknowledging the satisfaction and termination of this Agreement, and shall convey, assign and transfer or cause to be conveyed, assigned or transferred, and shall deliver or cause to be delivered, to the WLCDC, all property, including money, then held by the Trustee together with the Notes marked paid or cancelled.

(End of Article VIII)

## ARTICLE IX.

### MISCELLANEOUS PROVISIONS

Section 9.1. Deemed Agreement for Benefit of Parties Hereto. Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon, or to give to, any person other than the parties hereto, their successors and assigns, and the holder of the Notes and the Requisite Bondholders, any right, remedy or claim under or by reason of this Agreement or any covenant, condition or stipulation hereof; and the covenants, stipulations and agreements in this Agreement contained are and shall be for the sole and exclusive benefit of the parties hereto, their successors and assigns, the Trustee, the holder of the Notes and the Requisite Bondholders.

Section 9.2. Severability. In case any one or more of the provisions contained in this Agreement or in the Notes shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby.

Section 9.3. Limitation on Interest. No provisions of this Agreement or of the Notes shall require the payment or permit the collection of interest in excess of the maximum permitted by law. If any excess of interest in such respect is herein or in the Notes provided for, or shall be adjudicated to be so provided for herein or in the Notes, neither the WLCDC nor its successors or assigns shall be obligated to pay such interest in excess of the amount permitted by law, and the right to demand the payment of any such excess shall be and hereby is waived, and this provision shall control any provisions of this Agreement and the Notes inconsistent with this provision.

Section 9.4. Addresses for Notice and Demands. All notices, demands, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by registered or certified mail, postage prepaid, with proper address as indicated below. The Issuer, the WLCDC, the Trustee and the Paying Agent may, by written notice given by each to the others, designate any address or addresses to which notices, demands, certificates or other communications to them shall be sent when required as contemplated by this Agreement. Until otherwise provided by the respective parties, all notices, demands, certificates and communications to each of them shall be addressed as follows:

To the Issuer:                      City of West Lafayette, Indiana  
   222 N. Chauncey Ave.  
   West Lafayette, IN 47906  
   Attn: Controller

To the WLCDC:                      West Lafayette Community Development  
   Corporation  
   Attention: President  
   c/o Thomas L. Brooks, Jr.  
   Mayfield and Brooks  
   8 N. 3<sup>rd</sup> Street, Suite 405  
   P.O. Box 650



Lafayette, Indiana 47902

To the Trustee:

The Huntington National Bank  
Attn: Mark Hudson  
45 N. Pennsylvania Street  
INHP 22  
Indianapolis, Indiana 46204

Section 9.5. Counterparts. This Agreement is being executed in any number of counterparts, each of which is an original and all of which are identical. Each counterpart of this Agreement is to be deemed an original hereof and all counterparts collectively are to be deemed but one instrument.

Section 9.6. Governing Law. It is the intention of the parties hereto that this Agreement and the rights and obligations of the parties hereunder and the Notes and the rights and obligations of the parties thereunder, shall be governed by and construed and enforced in accordance with, the laws of Indiana.

(End of Article IX)

IN WITNESS WHEREOF, the Issuer and the WLCDC have caused this Agreement to be executed in their respective names, and the Issuer and the WLCDC have caused their corporate seals to be hereunto affixed and attested by their duly authorized officers, all as of the date first above written.

WEST LAFAYETTE COMMUNITY  
DEVELOPMENT CORPORATION, an  
Indiana non-profit corporation

By: \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_

CITY OF WEST LAFAYETTE, INDIANA

By: \_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
Controller

EXHIBIT A  
DESCRIPTION OF PROJECT

The State Street Project consists of the proposed redevelopment of State Street (formerly State Route 26) from the Wabash River through the City of West Lafayette's downtown and Purdue University's campus to U.S. 231 on the west.

EXHIBIT B

FORM OF SUBLEASE

## EXHIBIT C

### NOTE, SERIES 2016

FOR VALUE RECEIVED, the undersigned, West Lafayette Community Development Corporation ("WLCDC"), an Indiana non-profit corporation, organized and existing under the laws of the State of Indiana and qualified to do business in Indiana, hereby promises to pay to the order of the City of West Lafayette, Indiana ("Issuer"), in immediately available funds, the principal sum of \$48,000,000, or the maximum amount drawn under the Trust Indenture dated as of \_\_\_\_\_, 2016 (the "Indenture"), between the Issuer and The Huntington National Bank, Indianapolis, Indiana, as Trustee (the "Trustee") and interest thereon, during the term of the Financing Agreement between the Issuer and the WLCDC dated as of \_\_\_\_\_, 2016 (the "Agreement"), commencing one business day prior to each Interest Payment Date (as defined in the Agreement and in the), a sum which will equal the principal and interest which will become due on the next day on the City of West Lafayette, Indiana, Economic Development Revenue Bonds, Series 2016 (State Street Redevelopment Project) (the "Series 2016 Bonds"), all subject to the Agreement and to the presence of other available money for such installment in the Bond Fund (including without limitation any Sublease Revenues) under the Indenture.

Payments of both principal and interest are to be endorsed to the Trustee, and are to be made directly to the Trustee for the account of the Issuer pursuant to such endorsement. Such endorsement is to be made as security for the payment of the Series 2016 Bonds. All of the terms, conditions and provisions of the Agreement and the Indenture are, by this reference thereto, incorporated herein as a part of this Note.

This Note is issued pursuant to the Agreement, and is entitled to the benefits, and is subject to the conditions thereof.

The principal of this Note is subject to prepayment prior to maturity in the manner and subject to the conditions stated in the Agreement.

In certain events and in the manner set forth in the Agreement, the entire principal amount of this Note and the interest accrued thereon may be declared to be due and payable by the Trustee, but solely at the direction of the Bondholders. In certain events and in the manner set forth in the Agreement, the WLCDC shall be obligated to pay additional amounts.

The WLCDC hereby unconditionally waives diligence, presentment, protest, notice of dishonor and notice of default of the payment of any amount at any time payable to the Issuer under or in connection with this Note. All amounts payable hereunder are payable with reasonable attorneys fees and costs of collection and without relief from valuation and appraisal laws.

In any case where the date of payment hereunder shall be in Indianapolis, Indiana, a Saturday, Sunday or a legal holiday or a day on which banking institutions are authorized by law to close, then such payment shall be made on the next preceding business day with the same force and effect as if made on the date of payment hereunder.

All terms used in this Note which are defined in the Agreement or the Trust Indenture shall have the meanings assigned to them in the Agreement or the Trust Indenture.

The holder of this Note hereby irrevocably agrees that, notwithstanding any other provision of this Note or the Agreement, no remedy shall be available against the WLCDC in respect of this Note except to the extent of the Sublease Revenues (as defined in the Agreement) available for the payment and credit hereof under the Agreement.

IN WITNESS WHEREOF, the WLCDC has caused this Note to be duly executed and attested by its duly authorized officer all as of \_\_\_\_\_, 2016.

Issue Date: \_\_\_\_\_, 2016

WEST LAFAYETTE COMMUNITY  
DEVELOPMENT CORPORATION, an  
Indiana corporation

By: \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_

ENDORSEMENT

The undersigned hereby assigns its rights in this Note and requests that you pay, without recourse, to The Huntington National Bank, as Trustee under the Trust Indenture dated as of \_\_\_\_\_, 2016, from the undersigned.

CITY OF WEST LAFAYETTE, INDIANA

By: \_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
Controller